



SENATE REPUBLICAN

POLICY COMMITTEE

## Legislative Notice

No. 37

November 5, 2007

# **H.R. 2419 – The Food and Energy Security Act of 2007**

Calendar No. 339

*H.R. 2419 was read twice and placed on the Calendar on September 5. S. 2302 was reported from the Committee on Agriculture on November 2; S. Rept. 110-220. S. 2242 was reported from the Committee on Finance on October 25; S. Rept. 110-206.*

### **Noteworthy**

- Today the Senate began consideration of H.R. 2419, the Farm bill. The contents of S. 2302, the Food and Energy Security Act of 2007, together with the contents of S. 2242, the Heartland, Habitat, Harvest and Horticulture Act of 2007 (tax provisions), have been introduced as a substitute amendment.
- S. 2302 authorizes and extends for five years the major income support programs and authorities exercised by the United States Department of Agriculture (USDA). It also extends and makes changes to USDA's primary efforts in food and nutrition, conservation, trade, rural development, research, forestry, credit, and crop insurance programs.
- CBO estimates that enacting S. 2302 would bring total farm bill spending to \$283 billion over five years and \$600 billion over 10 years. CBO also estimates S. 2302 would increase direct spending by \$3.2 billion over five years and by \$3.3 billion over 10 years. CBO estimates that enacting S. 2242 would increase revenues by \$5.2 billion over five years and by \$5.4 billion over 10 years with some changes off-budget. CBO estimates that S. 2242 would increase direct spending by \$2.0 billion over five years, and by \$2.0 billion over 10 years.
- The summaries contained in this Legislative Notice reflect the contents of S. 2302 as reported on November 2, and of S. 2242 as reported on October 25.
- No Statement of Administration Policy (SAP) was available at press time. The SAP for the House version of H.R. 2419 contained a veto threat, citing concerns over expansions to Davis-Bacon, offsets through tax increases and gimmicks, and a lack of reform.

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## **Highlights**

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- **Title I** (Commodities) authorizes for five years income support in the form of direct payments, counter-cyclical payments, marketing assistance loans, and loan deficiency payments. It provides producers the option of participating in a new alternative commodity program, referred to as the Average Crop Revenue Program, beginning in 2010, 2011, or 2012. It also extends the sugar and dairy program, makes changes to payment limits under the title, and establishes a mandatory specialty crop block grant program. This title also generates \$4.5 billion in savings from the federal crop insurance program and makes other changes in this program.
  
- **Title II** (Conservation) reauthorizes a variety of conservation programs, including the Conservation Reserve Program (CRP), the Wetlands Reserve Program, the Healthy Forests Reserve Program, the Conservation Stewardship Program (CSP), formerly known as the Conservation Security Program, and the Environmental Quality Incentives Program (EQIP). This title also establishes a Conservation Stewardship Incentives Program to coordinate between EQIP and CSP, to identify resources of concern, and to avoid duplication between EQIP and CSP.
  
- **Title III** (Trade) reauthorizes USDA's food aid, export market development, and export credit programs. This title maintains the current levels of assistance, authorizes a new pilot program for the local purchase of food in recipient countries, and reauthorizes the Bill Emerson Humanitarian Trust.
  
- **Title IV** (Nutrition) reauthorizes USDA's various nutrition programs. It renames the Food Stamp Program as the "Food and Nutrition Program," excludes certain military payments from calculations for eligibility, and increases available deductions for beneficiaries. The title also increases the asset limit and indexes it to inflation and exempts certain accounts from counting against the limit. For nutrition education and promotion, this title also funds pilot projects designed to improve the dietary and health status of recipients, and expands the Fresh Fruit and Vegetable Program to all states.
  
- **Title V** (Credit) reauthorizes USDA's programs that support farm ownership loans and operating loans, and includes changes to the Farm Credit System Insurance Corporation. For the beginning farmer or rancher land sales programs, the title makes changes to the applicable interest rate calculations, increases loan maximums, and decreases down-payment minimums. The title also establishes a new pilot program to match qualified savings for certain beginning farmers and ranchers, increases loan limitations and direct loan program authorization levels for the direct and guaranteed loan program, and provides certain preferences for beginning and socially disadvantaged farmers and ranchers. A similar priority is established for socially disadvantaged producers and those converting to organic and sustainable farming practices under the soil and water conservation loans programs. The deadline for claimants who filed late is extended for

the class action settlement related to *Pigford v. Glickman*, No. 97-1978 and No. 98-1693 (D.D.C. July 14, 2000. Total claims are capped at \$100 million.

- **Title VI** (Rural Development) reauthorizes and makes changes to the Rural Utilities Service Broadband Loan and Loan Guarantee program. Eligible applicants must propose to service rural areas where at least 25 percent of households are not offered broadband service. The title also provides \$135 million in mandatory spending to fund pending water and wastewater loan and grant applications, \$40 million for grants, loans, and loan guarantees for rural day care facilities, and \$50 million in mandatory funds for rural hospital loans and loan guarantees. This title also reauthorizes the Circuit Rider program.
- **Title VII** (Research) authorizes USDA's various research, extension, and education activities. Authorities previously administered under the Cooperative State Research, Education and Extension Service (CSREES) are transferred to a new research institution with direct reporting requirements to the Secretary of Agriculture. The National Institute of Food and Agriculture (NIFA) is to operate four units executing infrastructure programs, competitive fundamental food and agriculture research, competitive applied food and agriculture research, and competitive education and fellowship programs. The title also provides guidance for coordination between NIFA and the Agriculture Research Service (ARS).
- **Title VIII** (Forestry) provides for the establishment of national priorities through amendments to the Cooperative Forestry Assistance Act of 1978, and establishes a new grant program for local forest protection. The title also directs the Secretary to establish a statewide planning program, including assessments, and directs certain cooperation and assistance with Indian tribes.
- **Title IX** (Energy) continues the federal biobased preference for certain purchases of materials, and other intermediate products, establishes a voluntary labeling program for biobased products, and establishes a program to assist producers with the transition to production of biomass crops. This title also makes available competitive grants for the development of pilot/demonstration scale biorefinery development. Matching funds are provided for feasibility studies. Competitive grants and loan guarantees are provided for repowering fossil-fueled biomass conversion facilities, plants, or manufacturing facilities with renewable resources. The title reauthorizes the Commodity Credit Corporation (CCC) bioenergy program, and establishes the Rural Energy for America Program to promote renewable energy development for producers, cooperatives, and rural small businesses.
- **Title X** (Livestock/Marketing/Regulatory Programs) makes changes to swine reporting requirements, establishes a catfish grading and inspection program at USDA, and changes the mandatory country of origin requirements by creating new label categories for red meat and changing record-keeping requirements. Macadamia nuts are added as a covered commodity. The title establishes a Special Counsel for Agricultural Competition to investigate and prosecute violations, and to be responsible for all duties and functions of USDA's Packers and Stockyards programs.

- **Title XI** (Miscellaneous) establishes an Office of Homeland Security at USDA, and requires USDA, the Department of Homeland Security (DHS), and the Department of Health and Human Services (HHS) to submit an integrated food defense budget. The title makes changes to the Agricultural Quarantine and Inspection Program, including the establishment of a USDA-DHS Joint Task Force, an Advisory Board for stakeholder input, and a Port Risk Committee, as well as liaison officers in both the Animal and Plant Health Inspection Service (APHIS) and Customs and Border Protection (CBP). This title also requires DHS, USDA, and HHS to assess potential agriculture biosecurity threats, determine which disease incidents would constitute an emergency, develop response procedures, and develop on-site rapid diagnostic tools. It establishes a National Plant Disease Recovery System and a National Veterinary Stockpile. USDA is required to issue DHS a permit to allow for the study of Foot and Mouth Disease.
- **Title XII** (Tax provisions) contains the legislative text of S. 2242, the Heartland, Habitat, Harvest, and Horticulture Act of 2007 (HHHH Act). This title makes various changes to tax law pertaining to agricultural activity, energy production, and conservation actions. The bill establishes a trust fund for agriculture disaster relief, provides a tax credit in lieu of certain conservation payment programs, and provides a tax credit for the recovery and restoration of endangered species. In addition, the bill modifies the effective date for provisions enacted in 2004 regarding certain leasing transactions and makes changes to the economic substance doctrine. CBO and the Joint Committee on Taxation (JCT) estimate that enacting the HHHH Act would increase revenues by \$2.7 billion in 2008, by \$5.2 billion over the 2008-2012 period and by \$5.4 billion over the 2008-2017 period. CBO estimates that the bill would increase direct spending by \$867 million in 2008, by \$2.0 billion over the 2008-2012 period, and by \$2.0 billion over the 2008-17 period.

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## **Key Provisions**

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Significant provisions of the bill include the following:

### Funding Mechanism/Finance Committee Tax Title:

The farm bill would increase direct spending by \$3.2 billion. This spending is fully offset by changes in the tax title. According to CBO, the tax title increases on-budget revenues by \$5.5 billion and increases outlays by \$1.9 billion, for a net increase in revenues of \$3.4 billion. The tax title also authorizes the creation of a permanent disaster relief trust fund. Both the disaster fund and the \$3.4 billion made available for purposes of spending within the Senate Agriculture's Committee's farm bill baseline are provided through an excess of revenue raised in the Finance agriculture tax package over expenditures. Notably, the Finance package permits recipients of cash payments within the CRP program to elect to take a tax credit in lieu of cash payments (see below for a detailed summary of this provision).

#### Agricultural Disaster Relief Trust Fund:

Section I of S. 2242 amends the Federal Crop Insurance Act to create a permanent Agriculture Disaster Relief Trust Fund (PADTF) that provides payments to farmers and ranchers who suffer losses in areas that are declared disaster areas by USDA. The fund will cover the “shallow losses” not covered by crop insurance. However, the proposal does require farmers and ranchers to purchase crop insurance in order to be eligible for disaster assistance. The PADTF will make payments under four new disaster assistance programs: the permanent crop disaster assistance program, the permanent livestock indemnity program, the tree assistance program, and the emergency assistance program for livestock, honey bees, and farm-raised fish. *The proposal is estimated to cost \$6.1 billion over five years and \$6.1 billion over ten years.*

#### Average Crop Revenue:

As noted above, title I permits producers to choose to participate in a new program, the Average Crop Revenue Program, or ACR option, instead of the traditional system of program benefits for covered commodities (direct payments, countercyclical payments, and loan programs). Should producers choose to participate, they will be eligible to receive two different types of payments within the program and be eligible for recourse loans. The first is a fixed payment equal to \$15 per base acre (based on a history of use). The second is a variable payment triggered if the actual revenue for a crop falls below a guaranteed level. The guaranteed level will be calculated on a per-crop and state-by-state basis; if actual revenue falls below 90 percent of the guaranteed level, then the variable payments will be triggered. The variable payment will be equal to 90 percent of the difference between the guaranteed level and the actual level. Producers are permitted to receive payments under this program beginning with the 2010, 2011, or 2012 crops. Enrollees must remain within the program for five years.

According to CBO, compared to the current baseline on a fiscal year basis, the availability of the ACR program will reduce costs by \$2.4 billion over 10 years. Because payments under ACR are not made until the second fiscal year after a qualified crop is harvested, the value of incurred payment obligations over these same years is projected to increase government costs by \$4.7 billion. The difference between these two projections is equal to the incurred payments that are not made until after 2017.

#### Sugar:

The sugar provisions in Subtitle B of title I establish sugar allotments at 85 percent of domestic human consumption, raise the sugar loan rate one cent per pound for raw sugar cane, set the loan rate for refined beet sugar at 128.5 percent of the loan rate for raw sugar cane, and establish a program under which USDA manages surplus sugar such that it is converted into ethanol.

#### Dairy:

Subtitle D of title I extends the Milk Income Loss Contract program (MILC) through the life of the farm bill and, beginning October 2009, increases the payment rate to 45 percent and increases the quantity of milk that is eligible to receive MILC payments. The subtitle also establishes product support prices for cheddar cheese, butter, and nonfat dry milk, and allows producers to forward contract with handlers who use milk for manufacturing purposes.

### Nutrition:

USDA's nutrition programs receive both the majority of the total funding in the farm bill and the largest increases in above-baseline funding in the five and 10-year budget windows. For fiscal years 2008-2012, new spending in the nutrition title is \$5.2 billion; for fiscal years 2008-2017, new spending is \$5.5 billion. When added to baseline spending, spending under the nutrition title is about \$191 billion for fiscal years 2008-2012, and \$402 billion over fiscal years 2008-2017. The bill's expansions of income deductions for beneficiaries, increases to the cap on asset limits, and expansion of the Fresh Fruit and Vegetable Program account for most of the additional spending under the nutrition title.

### Conservation Program Increases:

Like the Nutrition title, the Conservation title receives significant increases in above-baseline spending. For fiscal years 2008-2012, new spending totals \$4.4 billion; for fiscal years 2008-2017, new spending totals \$4 billion. (Note: The 10-year new spending total is below the five-year total because the bill sunsets funding for several programs, including the Wetlands Reserve Program and the Grasslands Reserve Program.) The bill provides funding for the Wetlands Reserve Program at \$1.7 billion for the 2008-2012 period and the Grassland Reserve Program at \$245 million for the 2008-2012 period. These two conservation programs do not have baselines starting in 2008. The bill significantly expands the Conservation Security Program (CSP), which is renamed the Conservation Stewardship Program. CSP receives most of the new spending in the bill. The bill reauthorizes several other programs, such as the Environmental Quality Incentives Program (EQIP) and the Farmland Protection Program, and continues funding for them at baseline levels.

### Energy:

After the Nutrition and Conservation titles, the Energy title is the next greatest recipient of above-baseline funding in the bill's 11 titles. Over fiscal years 2008-2012, the title increases direct spending by \$1 billion, and by \$1.1 billion over fiscal years 2008-2017. This new spending is significant when compared to the fiscal year 2008-2012 Energy title baseline of \$41 million. Of this new spending, funding support for agricultural feedstocks used to produce ethanol or other biofuels account for \$245 million over 10 years, costs of grants and guaranteed loans for biofuels plants total \$300 million, grants and loan guarantees for farms and small business development of renewable energy systems total \$230 million, and biomass energy research and development programs totaling \$140 million.

#### *Biomass Crops*

A biomass crop transition assistance program is established to support farmers as they begin to produce biomass crops to be used as bioenergy feedstocks. The program provides grants for establishing perennial biomass crops as well as incentive payments in subsequent years to encourage production of renewable biomass. The Secretary of Agriculture is authorized to provide assistance to agricultural producers for initiating production of annual crops intended for use as biomass feedstocks. In addition, biomass crop producers will be eligible for payments for each ton of biomass delivered to biomass conversion facilities, with payment rates established by the Secretary to reflect estimated costs of biomass harvesting, storage, and transportation. The bioenergy program that was established in the 2002 farm bill, and expired in

2006, is reinstated and revised to emphasize feedstock purchases for production of advanced biofuels, which excludes corn ethanol.

#### *Biorefineries and Repowering*

A program of grants is established to support development and construction of pilot and demonstration-scale biorefineries intended to establish the commercial viability of emerging processes for production of advanced biofuels. A second program of loan guarantees is established to support construction of commercial biorefineries using proven conversion technologies for producing advanced biofuels. A third program of grants and loan guarantees is established to encourage repowering of existing biorefineries, power plants, or manufacturing facilities in order to replace their use of fossil fuels with biomass or other forms of renewable energy. Grants supporting repowering projects are limited to 20 percent of project costs, and loan guarantees are limited to loans covering amounts up to 80 percent of project costs, with a cap of \$70 million per project.

#### *Rural Energy Management*

The 2002 farm bill established a program of grants to support energy audits and energy assistance for farmers, ranchers, and rural small businesses. However, funds have not been appropriated for this program. This legislation establishes the Rural Energy for America Program (REAP) in section 9007, which reinstates that program by authorizing the Secretary to provide grants to state agencies, regional, state-based or tribal energy organizations, universities, rural electric cooperatives or public power entities, nonprofit organizations, or similar entities to carry out such energy audit and assistance programs. The 2002 farm bill also established a program of grants and loan guarantees to support renewable energy systems or energy efficiency projects for farmers, ranchers, and rural small businesses. REAP continues that program, and provides production incentive payments in lieu of grants for renewable energy projects. This legislation also establishes a grant and loan guarantee program specifically to support the installation of energy from animal manure facilities under REAP.

#### *Bioenergy Research*

This legislation continues the Biomass Research and Development Act of 2000, as amended by the 2002 farm bill, which provides for competitive grants to conduct research and development on a broad range of bioenergy issues, including biomass crop species development, crop research, harvesting, transport and storage technologies, and biomass conversion technologies and byproduct utilization. The provision also continues implementation of this research program as a collaborative effort between the Departments of Agriculture and Energy with the Biomass Research and Development Board and the Biomass Technical Advisory Committee. The bill also continues the Sun Grant program of regionally-based biomass and bioenergy research, providing competitive research grants through five specified Sun Grant centers at landgrant universities. The legislation also establishes a subcenter for bioenergy research in the western Sun Grant region. Finally, the Secretary is called upon to establish a program of regional biomass crop research experiments at 10 land grant universities that are selected competitively.

### *Additional Provisions*

The bill continues the support of marketplace acceptance of bioenergy, biofuels, and biobased products. It continues the biodiesel fuel education program, the federal procurement program for biobased products, and the labeling program for biobased products. It extends the definition of biobased product to include biobased intermediates such as biobased monomers and polymers used in other products. It also establishes a program to promote markets for biobased products, and directs a study of the infrastructure needs for a significant expansion of the production and use of biofuels, including feasibility of pipelines and other biofuel transport systems, and resource needs such as biorefinery water requirements. The bill establishes a program of research and development into the production and use of woody biomass for bioenergy. It also establishes a program of grants for community wood energy systems for use in schools or other community facilities. Also established is a program of research and demonstration projects for the production and use of biochar as a soil conditioner and a means for carbon sequestration. In addition, a study of methods for calculating the life-cycle greenhouse gas emissions for biofuels and conventional fuels, including recommendations for simplified methodologies for such analysis, is required.

### Packer Ownership:

The bill prohibits packers from owning or feeding livestock directly, or through any arrangement that gives the packer control such that the producer is no longer materially participating in the management or production of the livestock. Packers are exempt from this legislation if they own livestock within 14 days of slaughter, if they are a cooperative, if they are not required to report under section 212 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1635a), or if they own one livestock processing plant. H.R. 2419, as passed by the House, contained no such prohibition.

### Country of Origin Labeling:

Title X, Section 10003 contains language similar to language concerning country-of-origin-labeling (COOL) contained in H.R. 2419 as passed by the House. Under current law, retailers must provide COOL for fresh meats, produce, and peanuts by September 30, 2008 (the effective date for seafood was September 30, 2004). Section 10003 continues the 2008 deadline, establishes additional categories, and changes record-keeping requirements and fines for violations. Macadamia nuts are designated as a covered commodity, a change not made in H.R. 2419 as passed by the House.

### Interstate Shipment of State-Inspected Meat:

Section 11067 of title XI provides the Secretary of Agriculture with the authority to act in coordination with an appropriate state inspection agency to ship meat and meat products in interstate commerce. The Secretary may select state establishments that are inspected by state employees to participate in this option. Establishments that are selected by the Secretary must undergo a full food safety assessment and fully follow the Federal Meat Inspection Act, including its regulations, notices, directives, and policies as would be required of a federal establishment. The Secretary may select state-inspected establishments that employ fewer than 25 employees on average. The Government Accountability Office (GAO) is directed to conduct an audit of the implementation of this program.

### Homeland Security/Agriculture Inspectors:

In March of 2003, responsibility for inspections of passenger and agricultural commodities was transferred from the USDA Animal and Plant Health Inspection Service (APHIS) to DHS Customs and Border Protection (CBP). Section 11024 of title XI, subsection (h) provides that nothing in the transfer of agricultural inspectors from USDA to DHS preempts USDA's role as the sector-specific lead for agricultural disease emergencies. This subsection also provides that USDA retains responsibility for other activities of the Agricultural Quarantine Inspection Program, such as pre-clearance of commodities, trade protocol verification, fumigation, quarantine, diagnosis, eradication, and indemnification. USDA also retains responsibility for exports, interstate and intrastate activities, and for all agricultural inspection training.

### Payment Limits:

Under current law a producer may receive a combined \$360,000 per year in direct payments, counter-cyclical payments, and marketing loans. A producer is limited annually to \$40,000 for direct payments, \$65,000 for counter-cyclical payments, and \$75,000 for marketing loan gains and loan deficiency payments. The total of these amounts add to \$180,000, but they can be doubled by treating a husband and wife as separate recipient units, or by a producer taking two additional payments through a second and third entity. In addition, a producer must meet a \$2.5 million Adjusted Gross Income (AGI) means test, unless 75 percent of AGI is from farming. Gains achieved through loan repayment with certificates and forfeitures are not subject to limits.

The bill changes current law by eliminating the three-entity rule, requiring direct attribution, lowering the amount a husband and wife may receive, and tightening the AGI means test. Under section 1703 of title I, payment limits are set at \$40,000 for direct payments and fixed ACR payments, and \$60,000 in counter-cyclical and revenue ACR payments. Each spouse is eligible for a separate payment limitation, although only one spouse has to meet the qualification of personal labor or active personal management. This section also requires the Secretary to attribute payments made to a legal entity to the natural persons who own the legal entity. If the fourth tier of ownership is that of a legal entity and not a natural person, the Secretary must reduce the amount of the payment by the amount that represents the indirect ownership by the fourth-tier legal entity. For the AGI means test, the limit is \$1,000,000 for 2009, and \$750,000 for 2010 and subsequent crop years. If 66.66 percent or more of the adjusted gross income is from farming, ranching, or forestry, the AGI limit does not apply.

As passed by the House, H.R. 2419 changes current law by reducing the AGI limit to \$1 million and to \$500,000 unless more than 67 percent of AGI is from farming, eliminating the "3-entity rule," and requiring direct attribution of payments to natural persons. The limits on direct payments are raised from \$40,000 to \$60,000, and the \$75,000 limit on the marketing loan program is eliminated. This results in a \$250,000 limit (compared to the Senate's \$200,000) on direct and counter-cyclical payments including spouse doubling, with no limits on marketing loans.

### Specialty Crops:

Part IV of title I, subtitle F establishes a mandatory Specialty Crop Block Grant Program. The program provides flexible grant funding to state departments of agriculture to fund programs and projects that support production-related research, commodity promotion, product quality enhancement, consumer health, food safety, and other programs intended to enhance the competitiveness of specialty crop producers. The block grant program received approximately \$15 million in appropriated funding in fiscal year 2007. This provision expands the program, providing mandatory funding amounts in fiscal years 2008-2011 of \$60 million, \$65 million, \$70 million, and \$75 million.

### Catfish:

Section 10002 of title X provides authority to the Secretary of Agriculture to establish a grading program for farm-raised catfish and to conduct inspection activities under the Federal Meat Inspection Act for farm-raised catfish.

### Food Safety:

Section 11060 of title XII establishes a Congressional Bipartisan Food Safety Commission to make recommendations for food safety programs. The Commission is to submit a report within a year which includes recommendations to modernize the U.S. food safety system, and harmonize and update food safety statutes. The report is to include draft statutory language.

### Discrimination Suit Against USDA/Pigford Suits:

Section 5402 of title V establishes a right of action permitting claimants in the *Pigford* decision (*Pigford v. Glickman*, No. 97-1978 and No. 98-1693 (D.D.C. July 14, 2000)) who had not previously obtained a determination on the merits of a *Pigford* claim to petition in civil court to obtain such a determination. The total amount of payment and debt relief pursuant to this authorized court action will be limited to \$100 million. The Secretary of Agriculture is restricted from beginning a foreclosure of a loan if the borrower is a *Pigford* claimant who can show that a pending foreclosure is related to a *Pigford* claim.

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## **Tax Title**

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*Scoring information and provision summaries are based on information provided by CBO and the Finance Committee.*

### **Section I: Supplemental Agriculture Disaster Assistance from the Agricultural Disaster Relief Trust Fund ((ADTF); see also pp. 3-5).**

The Supplemental Agriculture Disaster Assistance program creates a trust fund that will cover losses not covered by crop insurance. To receive benefits from the trust fund, farmers and ranchers must: (1) carry crop insurance; and (2) be located in a Secretarially declared disaster county or a contiguous county, or show proof of an individual loss of at least 50 percent. Farmers carrying higher levels of insurance will be eligible for higher payments. Each farmer or rancher applying for supplemental disaster assistance must show that whole farm income from crop production declined due to the loss of a particular crop due to natural disasters. The trust

fund will be funded through an allocation of tariff revenues. An amount equal to 3.34 percent of revenues from all tariffs will be transferred to the trust fund through December 31, 2012. Payments from the trust fund could begin in crop year 2008. Creation of the trust fund is modeled after Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), which sets aside a percentage of tariff revenues for nutrition and other programs that broadly benefit all sectors of U.S. agriculture

The ADTF will make payments under four new disaster assistance programs: the crop disaster assistance program, the livestock indemnity program, the tree assistance program, and the emergency assistance program for livestock, honey bees, and farm raised fish. In addition, the ADTF will also fund a new pest and disease management and disaster prevention program. Amounts not required to meet current withdrawals may be invested in U.S. Treasury obligations with interest credited to the ADTF. The ADTF may also borrow, with interest, as repayable advances sums necessary to carry out the purposes of the fund.

Crop Disaster Assistance Program (CDAP):

Generally, CDAP payments will be paid to producers located in disaster counties on 52 percent of the difference between the disaster program guarantee and the sum of total farm revenue. Disaster counties include counties receiving disaster declarations by the Secretary because of production losses resulting directly or indirectly from adverse weather, counties contiguous to such counties, and any farm whose production due to weather was less than 50 percent of normal production. To be eligible for CDAP payments, the producer must have purchased or enrolled in both crop insurance for insurable crops at a minimum of 50 percent of yield at 55 percent of price and the Noninsured Crop Disaster Assistance Program (NAP) for uninsurable crops. The Secretary may waive this requirement under certain conditions.

Livestock Indemnity Program:

The ADTF may also make payments under the livestock indemnity program to eligible producers on farms that have incurred livestock death losses in excess of normal mortality rates during the calendar year due to adverse weather, as determined by the Secretary. Indemnity payments are made at a rate of 75 percent of the fair market value of the livestock on the day before the date of death of the livestock as determined by the Secretary.

Tree Assistance Program:

The Secretary shall make payments to eligible orchardists as follows: (1) 75 percent reimbursement for the cost of replanting trees lost due to a natural disaster if tree mortality is in excess of 15 percent, adjusted for normal mortality, or sufficient seedlings to reestablish a stand; and (2) 50 percent reimbursement of the cost of pruning, removal, and other costs incurred to salvage existing trees or to prepare land to replant trees lost due to a natural disaster in excess of 15 percent damage or mortality adjusted for normal tree damage and mortality.

Emergency Assistance for livestock, honey bees, and farm-raised fish:

The Secretary shall use up to \$35 million annually from the trust fund to provide emergency relief to producers of livestock (including horses), honey bees, and farm-raised fish due to losses from adverse weather or other environmental conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered under the authority of the

Secretary to make qualifying natural disaster declarations. For purposes of the provision, the definition of farm-raised fish includes the propagation and rearing of aquatic species (including any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant) in controlled or semi-controlled environments.

Limitations:

No eligible producer may receive more than \$100,000 annually in total disaster assistance. No eligible producer may receive more than \$100,000 annually in total disaster assistance under this provision. A producer is not eligible for benefits under the provision if, as determined by the Secretary, such producer's adjusted gross income (as defined in section 1001D(a) of the Food Security Act of 1985) exceeds \$2.5 million, unless not less than 75 percent of the average adjusted gross income of such producer is derived from farming, ranching or forestry operations.

**Section II: Conservation Provisions**

Conservation Reserve Program Tax Credits:

The bill allows a participant in the Conservation Reserve Program (CRP) the option to choose between the regular cash payment and a tax credit. Such a credit will be equal to 100 percent of the value of the cash payment the participant would have otherwise received, and the credit will be excludable from both income and self-employment taxes. *The proposal is estimated to cost \$4.87 billion over five years and \$4.87 billion over 10 years.*

Exclusion of Conservation Reserve Program Payments from Self-Employment Taxes:

The proposal provides that CRP payments to retired or disabled individuals are to be treated as rental payments for tax purposes and are therefore excluded from self-employment taxes. The proposal is effective for payments made after December 31, 2007. *The proposal is estimated to cost \$87 million over five years and \$206 million over 10 years.*

Rural Heritage Conservation Extension:

The Pension Protection Act of 2006 (PPA), Public Law 109-432, included an enhanced tax deduction for conservation easements. Prior to enactment of the enhanced deduction, unlike the 50-percent adjusted gross income (AGI) limitation on most contributions, taxpayers were limited to deducting up to 30 percent of their AGI for donations of conservation easements to qualified conservation organizations (501(c)(3) conservation groups) or state or local governments. Taxpayers were allowed to carry-forward their deduction for up to five years. However, taxpayers were often unable to yield the maximum benefit from their easement donations. The provision in the Pension Act allowed all taxpayers to deduct up to 50 percent of their AGI for donations of conservation easements and carry forward the deduction for up to 15 years. Under the provision in PPA, ranchers and farmers may deduct up to 100 percent of their AGI for donations of conservation easements. The provision is set to expire at the end of 2007, but the bill extends permanently the charitable contribution for conservation easements. The bill provision is effective for contributions made in taxable years beginning after December 31, 2007. *The proposal is estimated to cost \$291 million over five years and \$761 million over 10 years.*

#### Endangered Species Recovery Act:

The bill establishes two new tax credits for taxpayers who take voluntary measures to aid in the recovery of species that are either listed as threatened or endangered under the Endangered Species Act (ESA) or deemed by the Secretaries of Interior or Commerce to be warranted for protection under ESA. The habitat protection easement tax credit provides a tax credit for a percentage of the property value difference for taxpayers who enter into an agreement with a governmental entity to protect the habitat of a qualified species by placing an easement on private land. The habitat restoration tax credit for restoration costs paid or incurred will be available to taxpayers who enter into an agreement with a governmental entity to protect the habitat of a qualified species for a specified period of time. The proposal also establishes a tax deduction for the cost of actions to implement recovery plans under ESA, and an exclusion from income tax for payments received under various cost-share conservation programs. The tax credit proposal is effective for taxable years beginning after December 31, 2007, and is effective for expenditures paid or incurred after the date of enactment. The exclusion from income provision is effective for payments received after the date of enactment. *The proposals are estimated to cost \$819 million over five years and \$1.832 billion over 10 years.*

#### Wetlands Reserve Program and Working Grasslands Protection Program Tax Credits:

Currently, participants in the Wetlands Reserve Program and Working Grasslands Protection Program receive cash payments for easements they sell to the government. The proposal will allow a participant in the Wetlands Reserve Program or the Working Grasslands Protection Program the option to choose between the cash payment for the easement or a tax credit. The tax credit will be equal to the value of the payment they would have received after taxes were paid on the payment. The proposal is effective for easements granted after September 30, 2007, in taxable years ending after such date. *The proposal is estimated to cost \$75 million over five years and \$75 million over 10 years.*

#### Forest Conservation Bonds:

This provision establishes a national program allowing the issuance of \$1.5 billion worth of tax-exempt timber conservation bonds. The bonds must be issued by a non-profit organization whose holdings consist primarily of forests and forest lands and whose board of directors includes specified representation of public officials and conservation organizations. Proceeds from the sale of bonds must be used for the acquisition of forest and forest lands that are subject to a conservation restriction, which is defined as a perpetual restriction that achieves specified conservation goals. The proposal is effective for obligations issued on or after the date that is 180 days after the date of enactment. *The proposal is estimated to cost \$92 million over five years and \$257 million over 10 years.*

#### Deduction for Qualified Timber Gain and Timber REIT Provisions:

Under current law, gains on timber sales are eligible for capital gains tax treatment. This provision provides an election to deduct from gross income 60 percent of qualified timber gain (qualified timber gain is gain from the sale or exchange of timber held for more than one year). In addition, the proposal provides for modernization of timber real estate investment trusts (REIT) rules for timber property, including: (1) clarifying that gains from the sale of timber held for less than one year is qualifying income; (2) providing that mineral royalty income is qualifying income; (3) changing the taxable REIT subsidiary asset test for timber REITs from 20

percent to 25 percent; and (4) making changes to the safe harbors for timber property sales. The proposal applies to taxable years beginning after the date of enactment and before December 1, 2008. *The proposal is estimated to cost \$318 million over five years and \$332 million over 10 years.*

### **Section III: Energy Provisions**

#### Residential Wind Credit:

The provision creates a new 30-percent investment tax credit, which is capped at \$4,000 per year, for qualified residential and commercial applications of small wind energy property, not to exceed 100 kilowatts. The credit is allowed for expenditures after December 31, 2007 for property placed in service prior to January 1, 2009. *The proposal is estimated to cost \$5 million over five years and \$5 million over 10 years.*

#### Transmission Pole Payment Exemption:

Easement payments generally must be included in a taxpayer's income for federal income tax purposes. The proposal allows taxpayers who locate an electricity transmission pole on a line of 230 kilovolts or more to exempt from gross income easement payments received from the electric utility or electric transmission company. The proposal is effective for payments received after the date of enactment. *The proposal is estimated to cost \$74 million over five years and \$179 million over 10 years.*

#### Small Producer Credit for Cellulosic Alcohol:

The proposal creates a new production tax credit of 67¢ per gallon (in addition to the current 51¢ per gallon ethanol credit and the 10¢ per gallon credit for small producers) for cellulosic alcohol. The credit is available through the first quarter of 2015. *The proposal is estimated to cost \$282 million over five years and \$1.079 billion over 10 years.*

#### Extension of Small Ethanol Producer Credit:

The proposal extends for two years (through December 31, 2012) the 10¢ per-gallon tax credit on the first 15 million gallons of ethanol production for producers with annual capacity of not more than 60 million gallons. The provision is effective on the date of enactment. *The proposal is estimated to cost \$57 million over five years and \$172 million over 10 years.*

#### Extension of Biodiesel Tax Credits:

The proposal extends for two years (through December 31, 2010) the \$1.00 and 50¢ production tax credits for biodiesel and extends for four years (through December 31, 2012) the 10¢ per-gallon tax credit on the first 15 million gallons of biodiesel production by small producers (defined as those with annual capacity of not more than 60 million gallons per year). The proposal is effective on the date of enactment. *The proposal is estimated to cost \$264 million over five years and \$267 million over 10 years.*

#### Fossil-Free Alcohol Production Credit:

The proposal creates a new small producer alcohol credit of 25¢ per gallon for facilities that produce ethanol through a process that does not use a fossil-based resource. The credit will

be available through December 31, 2012. The proposal is effective after December 31, 2007. *The proposal is estimated to cost \$242 million over five years and \$278 million over 10 years.*

Expansion of Special Depreciation Allowance for Cellulosic Ethanol Facilities:

The proposal expands the eligible property qualifying for the 50-percent expensing to include alcohol produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis. The provision is effective for property placed in service after the date of enactment in taxable years ending after the date of enactment. *The proposal is estimated to cost \$4 million over five years and \$1 million over 10 years.*

Extension of Renewable Diesel Incentives:

The provision extends for two years (through December 31, 2010) the \$1.00 tax credit for diesel created through a thermal depolymerization process. The proposal also caps, on a per-facility basis, the \$1.00 credit at 60 million gallons per year of co-produced fuel, and is effective for fuel sold or used after the date of enactment. *The proposal is estimated to cost \$211 million over five years and \$211 million over 10 years.*

Extension and Modification of Alternative Fuels Credit:

The proposal extends the alternative fuel excise tax credit under Section 6426 of the Internal Revenue Code through December 31, 2010 for all fuels except for hydrogen (which maintains its current-law expiration date of September 30, 2014). Upon the date of enactment, for liquid fuel derived from coal through the Fischer-Tropsch process ("coal-to-liquids") to qualify as an alternative fuel, the fuel must be produced at a facility that separates and sequesters at least 50 percent of its CO<sub>2</sub> emissions. The sequestration requirement increases to 75 percent on December 31, 2010. This 75-percent standard may be implemented prior to December 31, 2010, subject to certification of feasibility. The proposal further provides that biomass gas versions of liquefied petroleum gas, liquefied or compressed natural gas, and aviation fuels qualify for the credit. *The proposal is estimated to cost \$332 million over five years and \$332 million over 10 years.*

Extension of Alternative Fuel Refueling Property Installation Credit:

The proposal extends the 30-percent investment tax credit for refueling property (capped at \$30,000) for nonhydrogen property for one year (through December 31, 2010). The provision is effective for property placed in service after the date of enactment. *The proposal is estimated to cost \$107 million over five years and \$119 million over 10 years.*

Extension of Tariff on Ethanol:

The proposal extends the tariff on imported ethanol for two years (through December 31, 2010). The proposal is effective on the date of enactment. *The proposal is estimated to raise \$25 million over five years and \$25 million over 10 years.*

Duty Drawback on Imported Ethanol:

Present law allows duties paid upon import to be reclaimed at a later date if the same or similar product is exported. Current law treats ethanol blended with gasoline the same as jet fuel for purposes of duty reclamation. This provision terminates that treatment. Any drawback for ethanol or ethanol blended with gasoline is still allowed. *The proposal is estimated to raise \$8*

*million over five years and \$10 million over 10 years. (This estimate is subject to change by the Congressional Budget Office.)*

Modification of the Incentives Relating to Alcohol Fuels (Volumetric Ethanol Excise Tax Credit):

The provision reduces the \$.51 per-gallon tax credit for ethanol by \$.05 beginning with the first calendar year after the year in which 7.5 billion gallons of ethanol (including cellulosic ethanol) have been produced. The proposal is effective on the date of enactment. *The proposal is estimated to raise \$854 million over five years and \$854 million over 10 years.*

Treatment of Alcohol and Biodiesel Fuel Mixtures:

The provision adds qualified alcohol fuel mixtures and qualified biodiesel fuel mixtures to the definition of taxable fuel. In addition, the proposal requires additional reporting by the registered blender and documentation of the American Society for Testing and Materials (ASTM) standard. This provision is effective for fuels removed, entered, or sold after December 31, 2007. *The proposal is estimated to raise \$8 million over five years and \$2 million over 10 years.*

Exclusion of Denaturant from Alcohol Fuels Credit:

The proposal excludes the volume of denaturant (a substance used to render alcohol toxic or undrinkable) in fuel for purposes of calculating the volume of alcohol eligible for the alcohol fuels credit. The provision is effective January 1, 2008. *The proposal is estimated to raise \$284 million over five years and \$284 million over 10 years.*

Modify Treatment of Certain USDA Energy Grant/Loans Used for Renewable Power Facilities:

Present law requires a reduction in the Section 45 production tax credit for renewable electricity for grants, tax-exempt bonds, subsidized energy financing and other credits. This proposal provides an exception to this general rule for any financing to farmers, ranchers, or rural small businesses issued by the Secretary of Agriculture under authority granted by section 9006 of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171). The proposal is effective for facilities placed into service after the date of enactment. *The proposal is estimated to cost \$6 million over five years and \$14 million over 10 years.*

**Section IV: Agricultural Provisions**

Agricultural Bond Improvements:

Agricultural Bonds (Aggie Bonds) are tax-exempt bonds issued by state and local governments to provide low interest loans for first-time ranchers and farmers. A first-time rancher or farmer is any individual who has never had a direct ownership interest in substantial farmland. Substantial farmland is defined as a parcel of land that is larger than 30 percent of the median size of a farm in the county in which such parcel is located and that has a fair market value greater than \$125,000. The proposal changes Aggie Bonds by: (1) increasing the loan limit from \$250,000 to \$450,000 and indexing such limit amount for inflation; and (2) eliminating the dollar limitation in the definition of substantial farmland. The proposal is effective for bonds issued after the date of enactment. *The proposal is estimated to cost \$4 million over five years and \$19 million over 10 years.*

#### Installment Sale Modification for Single-Purpose Agricultural Property:

Single-purpose agricultural or horticultural property (as defined in section 168(i)(13), such as chicken barns, pig barns, or greenhouses) or any tree or vine-bearing fruit or nuts (as defined in section 168(e)(3)(D)) may be depreciated more quickly than other real estate, but this depreciation is subject to a recapture provision when the property is sold. This means that a taxpayer who has taken significant amounts of accelerated depreciation on single-purpose agricultural property may be reluctant or unable to sell or exchange the agricultural property due to the large amount of ordinary income tax due at the time of the sale or exchange. The proposal allows a taxpayer to recapture depreciation taken on single-purpose agricultural property as ordinary income ratably over the term of an installment obligation rather than all at once in the year of the sale. The proposal is effective for installment sales after the date of enactment. *The proposal is estimated to cost \$125 million over five years and \$246 million over 10 years.*

#### Section 1031 – Eligibility for Mutual Ditch, Reservoir, or Irrigation Company Stock:

In general, section 1031 does not apply to any exchange of stock. Colorado uses mutual ditch, reservoir, and irrigation companies to manage joint water distribution rights, and the stock of such companies are recognized as real property. This provision will clarify that the exchange of mutual ditch, reservoir, or irrigation company stock is effectively an exchange of real property and therefore qualifies for section 1031. The proposal is effective for transfers after the date of enactment. *The proposal is estimated to cost \$1 million over five years and \$2 million over 10 years.*

#### Rural Renaissance Bonds:

This proposal creates a new category of tax credit bonds with a total allocation of \$400 million for projects such as rural electric, distance learning and telemedicine programs, rural telephone, broadband access, and rural community facility programs. The provision is effective for bonds issued after the date of enactment. *The proposal is estimated to cost \$89 million over five years and \$168 million over 10 years.*

#### Agricultural Business Security Tax Credit:

Present law does not provide a credit for agricultural business security. This proposal provides a retailer of agricultural products and chemicals or a manufacturer, formulator, or distributor of certain pesticides a business tax credit for 30 percent of costs for the protection of such chemicals or pesticides, including employee security training and background checks, installation of security equipment, and computer network safeguards. The provision sets a \$2 million annual limit on such credit and a per-facility limitation of \$100,000 (reduced by credits received for the five prior taxable years). The proposal is effective for expenses paid or incurred after the date of enactment. *The proposal is estimated to cost \$14 million over five years and \$14 million over 10 years.*

#### Credit for Drug Safety and Effectiveness Testing for Minor Species:

This proposal provides a 50-percent credit for safety and effectiveness testing expenses for new animal drugs intended for minor species. The provision is effective for expenses incurred after the date of enactment. *The proposal is estimated to cost \$41 million over five years and \$121 million over 10 years.*

### Reduce the Recovery Period for Certain Farming Machinery and Equipment:

A taxpayer generally may not deduct the cost of property used in a trade or business immediately, but must recover the cost over time through depreciation. Currently, the cost of farm machinery and equipment must be recovered over seven years. This proposal shortens the recovery period for certain farming business machinery and equipment to five years. The provision is effective for property placed in service after the date of enactment and sunsets December 31, 2009. *The proposal is estimated to cost \$1.477 billion over five years and have a negligible revenue effect over 10 years.*

### Broadband Technology and Infrastructure Tax Incentives:

The proposal creates a two-tiered tax incentive to stimulate new investment in broadband infrastructure: 50-percent expensing for investment in current-generation broadband infrastructure (five megabits per second download, one megabit per second upload) in rural and underserved areas; and full expensing for “next generation” broadband investments (100 megabits per second download, 20 megabits per second upload) in rural, underserved, and other residential areas. The provision is effective on the date of enactment and applies to expenditures incurred after the date of enactment and on or before the first December 31 that is three years after such date. *The proposal is estimated to cost \$399 million over five years and \$72 million over 10 years.*

### Energy Efficient Motors Tax Credit:

The proposal provides for a tax credit for the purchase of qualified energy efficient motors that meet or exceed certain energy efficiency standards, subject to limitations. A qualified energy efficient motor is a general- or definite-purpose electric motor of 500 horsepower or less that meets or exceeds the efficiency levels specified in Tables 12-12 or 12-13 of the National Electrical Manufacturers Association MG-1 (2006), the original use of which begins with the taxpayer, and that is placed in service in the United States. Purchasers of qualified energy efficient motors will be allowed a credit of an amount equal to \$15 per horsepower of qualified energy efficient motors placed in service by the taxpayer during the taxable year. The tax credit will be part of the general business credit and the aggregate amount of credit that a taxpayer may claim for any taxable year shall not exceed \$1,250,000. *The proposal is estimated to cost \$132 million over five years and \$129 million over 10 years.*

## **Section V: Revenue Raising Provisions**

### Limitation on Schedule F Losses:

Under current law, except for passive activity rules in section 469, the amount of Schedule F (agricultural) losses that a taxpayer may use to reduce income is not limited. The provision limits the amount of Schedule F losses that a taxpayer may use to offset income to \$200,000 if the taxpayer receives Agriculture Program Payments or Commodity Credit Corporation loans. Losses that are limited in a particular year may be carried forward to subsequent years. The proposal is effective for taxable years beginning after December 31, 2007. *The proposal is estimated to raise \$279 million over five years and \$456 million over 10 years.*

### Optional Self-Employment Tax:

Qualifying for Social Security benefits can be difficult for self-employed farmers and ranchers because they do not always have a steady income stream. When there are no earnings, no Social Security taxes are paid and no quarters are accrued. Through farm optional methods, farmers and ranchers may voluntarily pay Social Security taxes in order to earn quarters so that they can receive Social Security benefits. However, the payment thresholds are outdated and no longer allow farmers and ranchers to earn four quarters of credit per year. The proposal modifies the farm optional method so that electing taxpayers may be eligible to secure four credits of Social Security benefit coverage each taxable year. The provision makes a similar modification to the nonfarm-optional method. The proposal is effective for taxable years beginning after December 31, 2007. *The proposal is estimated to raise \$46 million over five years and \$110 million over 10 years.*

### Information Reporting for Commodity Credit Corporation Transactions:

The Commodity Credit Corporation (CCC) may make market assistance loans to farmers of eligible commodities. A farmer receiving a CCC loan can use cash to repay such a loan, purchase CCC certificates for use in repayment of the loan, or deliver the pledged collateral as full payment for the loan at maturity. If a farmer uses cash instead of certificates to repay the loan, the farmer will receive a Form CCC-1099-G Information Return showing the market-gain realized. For transactions prior to January 1, 2001, however, if a farmer uses CCC certificates to facilitate repayment of a CCC loan, the farmer does not receive an information return. For transactions after January 1, 2001, IRS Notice 2007-63 provides that the CCC must use Form 1099-G to report market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan. The proposal codifies the requirement of IRS Notice 2007-63. The proposal is effective for loans repaid on or after January 1, 2007. *The proposal is estimated to have no revenue effect.*

### Modification of Section 1031 – Treatment for Certain Real Estate:

An exchange of property, like a sale, generally is a taxable event. However, no gain or loss is recognized if property held for productive use in a trade or business is exchanged for property of a like kind. For purposes of section 1031, the determination of a like kind relates to the nature or character of the property and not grade or quality. Therefore, improved real estate and unimproved real estate are generally considered to be property of a like kind as this distinction relates to the grade or quality of the real estate. This provision modifies section 1031 to disallow nonrecognition treatment exchanges of improved real estate for unimproved real estate for which the owner is receiving Agriculture Program Payments. The proposal is effective for transfers after the date of enactment. *The proposal is estimated to raise \$12 million over five years and \$27 million over 10 years.*

### Sale-In/Lease-Out (SILO) – Foreign:

The provision disallows future losses on foreign tax-exempt use property for leases entered into on or before March 12, 2004. A provision in the American Jobs Creation Act applied to leases entered into after March 12, 2004. In a foreign SILO transaction, a foreign government or other foreign entity that does not pay U.S. tax “sells” property, such as a subway or sewer, to a U.S. taxable investor and then “leases” the property back for use. The effect is to

transfer depreciation deductions from the tax-exempt entity, which cannot use the deductions, to a taxable entity that can, with little economic risk. The proposal is effective for taxable years beginning after December 31, 2006. *The proposal is estimated to raise \$4.561 billion over five years and \$3.235 billion over 10 years.*

Disallowance of “Like Kind” Exchange Treatment of Collectibles:

An exchange of property, like a sale, generally is a taxable event. However, no gain or loss is recognized if property held for productive use in a trade or business is exchanged for property of a like kind. This proposal prevents “like kind” exchange treatment of collectibles, as defined by section 408(m)(2) (such as works of art, antique rugs, gems, stamps, coins, or bottles of wine). The provision will be effective for exchanges on or after the date of enactment. *The proposal is estimated to raise \$79 million over five years and \$175 million over 10 years.*

Denial of Deduction for Certain Fines, Penalties, and Other Amounts:

This provision clarifies that amounts paid or incurred in connection with civil settlements to or at the direction of a government for the violation of any law or the potential violation of law are not deductible for federal income tax purposes. Amounts for restitution or remediation are deductible. Government agencies are required to notify the IRS of settlements. The provision will be effective for amounts paid or incurred on or after the date of enactment unless paid under a binding order or agreement entered before that date. *The proposal is estimated to raise \$137 million over five years and \$210 million over 10 years.*

Changes to the Economic Substance Doctrine and Penalty for Understatements Attributable to Transactions Lacking Economic Substance:

This provision clarifies the application of the economic substance doctrine but does not change current-law standards used by courts in determining when to utilize an economic substance analysis. Under the provision, in any case in which a court determines that the economic substance doctrine is relevant to a transaction, the economic substance doctrine will be satisfied only if (1) the transaction changes in a meaningful way (apart from federal income tax consequences) the taxpayer’s economic position, and (2) the taxpayer has a substantial non-federal tax purpose for entering into such transaction. The provision also imposes a 30-percent penalty on understatements attributable to a non-economic substance transaction (unless the transaction was disclosed, in which case the penalty is 20 percent). This proposal is effective for transactions entered into after the date of enactment. *The proposal is estimated to raise \$3.684 billion over five years and \$10.012 billion over 10 years.*

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## **Administration Position**

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At press time, a SAP was not available. The SAP for H.R. 2419 threatened a veto, citing concerns over expansions to Davis-Bacon, offsets through tax increases and gimmicks, and a lack of reform.

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## **Cost**

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CBO estimates that enacting the Food and Energy Security Act of 2007 would bring total spending under the USDA programs authorized by it to \$283 billion over fiscal years 2008-2012 and \$600 billion over fiscal years 2008-2017. CBO also estimates that over fiscal years 2008-2012, the bill would increase direct spending by \$3.2 billion, and by \$3.3 billion over fiscal years 2008-2017, assuming programs set to expire in five years are reauthorized over the 10-year window. The bill authorizes discretionary appropriations for certain USDA programs involving research and education, nutrition, trade promotion, rural development, credit assistance, forestry, and conservation initiatives for which CBO has yet to complete estimates of the discretionary costs of implementation.

CBO and the Joint Committee on Taxation (JCT) estimate that enacting S. 2242, the Heartland, Habitat, Harvest, and Horticulture Act of 2007, would increase revenues by \$2.7 billion in fiscal year 2008, by \$5.2 billion over the fiscal year 2008-2012 period and by \$5.4 billion over the fiscal year 2008-2017 period, with some changes off-budget. CBO estimates that the bill would increase direct spending by \$867 million in fiscal year 2008, by \$2.0 billion over the fiscal year 2008-2012 period, and by \$2.0 billion over the fiscal year 2008-2017 period.

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## **Amendments**

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Amendments addressing the following issues may be offered:

- To prohibit certain exercise of eminent domain/power transmission corridors
- To set a new cap on payment limits
- To revise the Milk Income Loss Contracting (MILC) program
- To make changes to direct payments
- To make changes to the crop insurance provisions
- To strike the sugar program
- To make certain Ground and Surface Water Program modifications
- To increase conservation funding
- To make changes to commodity programs in light of World Trade Organization obligations
- To make changes to Cuba trade policy
- To make changes to the McGovern-Dole international feeding program
- To raise income eligibility standards for elderly recipients of food aid
- To raise entitlement levels for Emergency Food Assistance
- To raise the cap for settlement of *Pigford* class action cases
- To strike the foreign food aid purchases pilot program
- To change the Energy title
- To strike packer ownership ban language
- To transfer APHIS agriculture inspection employees currently under DHS jurisdiction back to USDA

- To sunset food safety legislation
- To add AgJobs
- To add a renewable fuels standard
- To make various changes to the tax code, including 2001-2003 tax cuts, various tax extenders, and the Congressman Rangel tax plan
- To prohibit the use of private companies and require that only state civil service employees administer nutrition programs
- One full substitute is expected; an amendment by Senator Lugar may replace direct payments, countercyclical payments, and marketing loans with two insurance programs. For producers of crops for which futures markets exist, an insurance program would provide insurance support (at no out-of-pocket cost) if revenue or yields decrease by 15 percent or more. For specialty crop producers and others not eligible under traditional commodity programs, the second provision would provide insurance when a producer's operation-wide revenue falls 20 percent below a 5 year average. Savings may be devoted to deficit reduction, nutrition programs, and conservation.